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Of Attorneys for Debtor-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re)	Case No. 16-30406-rld11
)	
SeaPort Airlines, Inc.,)	DEBTOR'S MOTION FOR ORDER
)	ESTABLISHING PROCEDURES FOR
)	PROVISIONAL PAYMENT OF EMBARK
)	AVIATION CORP.'S PROFESSIONAL FEES
)	AND EXPENSES ON A TWICE-MONTHLY
Debtor-in-Possession.)	BASIS

SeaPort Airlines, Inc. as debtor-in-possession ("Debtor"), hereby moves this Court for entry of an order establishing procedures for the payment to Embark Aviation Corp. ("Professional") of interim compensation and reimbursement of expenses on a twice-monthly basis. In support of this Motion, the Debtor represents:

BACKGROUND

1. On (the "Petition Date"), the Debtor filed herein a voluntary petition under Chapter 11 of the Bankruptcy Code.
2. The Debtor is continuing in the management and possession of its business and properties as debtor-in-possession under §§ 1107 and 1108 of the Bankruptcy Code. An Official Unsecured Creditors Committee was appointed pursuant to §1102 of the Bankruptcy Code.

3. Debtor is an Alaskan corporation headquartered in Portland, Oregon that is engaged in the business of providing passenger airline transportation.

JURISDICTION

4. This Court has jurisdiction over this matter pursuant to 28 USC §§ 157 and 1334 and LR 2100.1. Consideration of this motion constitutes a core proceeding within the meaning of 28 USC § 157(b)(2)(A). The statutory predicates for the relief sought by this motion are §§ 105, 327, 328 and 331 of the Bankruptcy Code. Venue is proper under 28 USC § 1408.

RELIEF REQUESTED

5. By this motion, the Debtor seeks entry of an order substantially in the form attached hereto as **Exhibit A** allowing Professional to be paid twice per month and establishing procedures making such payment.

POINTS AND AUTHORITIES

6. Section 331 of the Bankruptcy Code provides:

A trustee, an examiner, a debtor's attorney, or any professional person employed under section 327 or 1103 of this title may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title. After notice and a hearing, the court may allow and disburse to such applicant such compensation or reimbursement.

The Bankruptcy Appellate Panel of the Ninth Circuit has ruled that Section 331 authorizes a bankruptcy court to issue an order providing for periodic payments to professionals. In re Knudsen Corp. 84 B.R. 668 (9th Cir. B.A.P. 1988). The factors supporting issuance of an order authorizing periodic payments of fees as set forth in *Knudsen* are:

- (1) The case is an unusually large one in which an exceptionally large amount of fees accrue each month;
- (2) The court is convinced that waiting an extended period for payment would place an undue hardship on counsel;
- (3) The court is satisfied that counsel can respond to any reassessment in one or more of the ways listed above; and
- (4) The fee retainer procedure is, itself, the subject of a noticed hearing prior to any payment thereunder.

7. Section 105(a) of the Bankruptcy Code provides, in relevant part, that a bankruptcy court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]."

8. Absent an order of this Court, section 331 limits professionals that render services in this Chapter 11 case to quarterly payment of fees and expenses.

9. Professional is an airline restructuring consulting firm which will be asked to determine if Debtor is a viable candidate for restructuring and if so, to assist Debtor in developing and presenting its restructuring plan. Time is of the essence for Professional to perform its work as the current deadline to submit the Plan of Reorganization is June 6, 2016. It would be unfair to procure the services requested from Professional within the next six weeks without assuring payment, particularly if Professional should conclude restructuring is not possible as then Professional would potentially not be paid, or payment would be subject to the delay of a Chapter 7 process. The substance of the *Knudsen* factors are present in this case for the particular professional as follows:

- (1) The Professional will incur a large amount of fees (in fact, almost all of its fees) in a very short period of time;

- (2) Waiting for an extended periodic would both be unfair and a hardship to the Professional;
- (3) The Professional will certify that it has the financial ability to return fees if the fees are later disallowed; and
- (4) Reasonable notice of the Motion to pay periodic payments to this Professional will be or has been given in advance of approval of such process.

NOTICE

10. Notice of this motion has been given to parties requesting special notice, their attorneys, each member of the Official Committee of Unsecured Creditors, attorney(s) for the Official Committee of Unsecured Creditors, the U.S. Trustee and the twenty largest unsecured creditors. Debtor submits that the foregoing constitutes good and sufficient notice and that no other or further notice need be given in the circumstances.

WHEREFORE, the Debtor requests entry of an order substantially in the form attached hereto as **Exhibit A** and such other and further relief as is appropriate.

DATED: April 29, 2016

Respectfully submitted;

VANDEN BOS & CHAPMAN, LLP

By: /s/Robert J Vanden Bos
Robert J Vanden Bos, OSB #78100
Douglas R. Ricks, OSB #044026
Christopher N. Coyle, OSB #07350
Of Attorneys for Debtor-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re) Case No. 16-30406-rld11
)
SeaPort Airlines, Inc.,) ORDER ESTABLISHING PROCEDURES FOR
) PAYMENT TO CHAPTER 11 PROFESSIONAL
) EMBARK AVIATION CORP. ON A TWICE-
Debtor-in-Possession.) MONTHLY BASIS

Based on the hearing held on _____, 2016, and Debtor's Motion for Order Establishing Procedures for Provisional Payment of Embark Aviation Corp.'S Professional Fees and Expenses on a Twice-Monthly Basis (the "Motion") filed by SeaPort Airlines, Inc. (the "Debtor"),

IT IS HEREBY ORDERED that:

1. Embark Aviation Corp. ("Professional") may, upon compliance with the provisions of paragraph 4 below, seek and receive twice monthly payments of compensation and reimbursement of expenses on a provisional basis in accordance with the following procedure:

a. On or before the 1st day and 15th day of each month, the Professional shall file with the Court a detailed billing statement for fees and expenses incurred in the previous billing cycle. The Professional shall also transmit a copy of each billing statement that is filed with the Court to (i): SeaPort Airlines, Inc., c/o Timothy Sieber, 816 SW First Avenue, Portland, Oregon 97204, (ii) the Debtor's general bankruptcy counsel, Vanden Bos & Chapman, LLP, 319 SW Washington Street, Suite 520, Portland, Oregon, OR 97204, Attn: Robert J Vanden Bos, Esq., (iii) the U.S. Trustee, 620 SW Main, Suite 213, Portland, OR 97204, (iv) the Committee's attorney: Douglas Pahl, Perkins Coie LLP, 1120 NW Couch, 10th Fl, Portland, OR 97209 and (v) such other parties who specifically request in writing to the Professional that they be provided with copies of billing statements filed pursuant to this Order. A billing statement that is filed after the 1st day or 15th day of a month will not be considered for payment until the following billing cycle.

b. If a party in interest objects to the compensation or reimbursement sought in a particular billing statement, such party shall, within 5 days of the service of the billing statement, file with the Court and serve upon the Professional and upon the other persons designated to receive statements in subparagraph (a) above, a written "Notice of Objection to Billing Statement," which shall set forth the nature of the objection and the amount at issue. Thereafter, the objecting party and the Professional shall attempt to reach an agreement regarding the correct payment to be made on a provisional basis. If the parties are unable to reach an agreement on the objection, the Debtor shall not make payment to Professional with respect to the disputed fees or disbursements until the Court has entered an order with respect thereto. The pendency of an objection to payment of compensation or reimbursement of expenses shall not

disqualify the Professional from the future payment of compensation or reimbursement of expenses as set forth in this Order.

c. At the expiration of the 5-day period specified in subparagraph (b) above, the Debtor may pay up to 80 percent of the fees and 100 percent of the expenses requested in the billing statement that are not the subject of a Notice of Objection to Billing Statement.

d. After the first four months, and at four month intervals thereafter, the Professional shall file with the Court and serve on the U.S. Trustee an interim fee application under section 331 of the Bankruptcy Code for the compensation and reimbursement of expenses requested pursuant to this procedure during the prior four (4) months. The first such applications shall be filed on or before June 30, 2016, and shall cover the period through and including February 6, 2016 - May 31, 2016.

2. Neither the payment of, nor the failure of any party to object to payment of, provisional compensation or reimbursement hereunder shall bind any party in interest or the Court with respect to the allowance of compensation or reimbursement or constitute a waiver of any party's right to later object thereto on any grounds. The Court may allow or disallow all or any portion of the fees and expenses requested in an application. If the Court awards an amount greater than that previously paid under the monthly payment procedure, the Debtor shall promptly pay the additional amount in accordance with its ordinary accounts payable procedure. If the Court disallows all or any portion of the fees and expenses requested in the application, the Professional shall repay to the Debtor, within 10 business days of the Court's order, all amounts previously paid by the Debtor in excess of the allowed amount.

3. The Debtor shall include all payments made hereunder in its monthly financial reports required by LBR 2015-2.

4. As a condition precedent to such Professional's right to receive payment hereunder, the Professional shall file with the Court a verified statement warranting the Professional's financial capability to repay to the bankruptcy estate all amounts that such Professional may receive on a provisional basis pursuant to this Order.

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I certify that I have complied with the requirements of LBR 9021-1(a)(2)(A).

PRESENTED BY:

/s/Robert J Vanden Bos
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Fax: (503) 241-3731

Of Attorneys for Debtor

First Class Mail:

SeaPort Airlines, Inc.
Attn: Timothy Sieber
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Portland, Oregon 97204

JA Flight Services, LLC
c/o Bruce A. Jacobs, President
Creditors Committee Chairperson
43W700 US Route 30
Sugar Grove, IL 60554

Tulare County Tax Collector
Attn Jorge Garcia
Deputy Tax Collector
221 S Mooney Blvd Rm 104-E
Visalia, CA 93291-4593

Michael J. Edelman
VEDDER PRICE
1633 Broadway, 47th Floor
New York, New York 10019

Franklin C. Adams
POB 1028
Riverside, CA 92502-1028

Mark J. Wolfson
100 N Tampa St #2700
Tampa, FL 33602

Olson Brooksby PC
c/o Scott Brooksby, Esq.
200 Pacific Building
520 SW Yamhill Street
Portland, OR 97204

Memphis Propeller Service, Inc.
c/o Mark Matthews, President
11098 Willow Ridge Drive
Olive Branch, MS 38654

Electronic Mail:

The foregoing was served on all CM/ECF participants through the Court's Case Management/ Electronic Case File system.

CERTIFICATE - TRUE COPY

DATE: April 29, 2016

DOCUMENT: DEBTOR'S MOTION FOR ORDER ESTABLISHING
PROCEDURES FOR PROVISIONAL PAYMENT OF EMBARK
AVIATION CORP.'S PROFESSIONAL FEES AND EXPENSES
ON A TWICE-MONTHLY BASIS

I hereby certify that I prepared the foregoing copy of the foregoing named document and have carefully compared the same with the original thereof and it is a correct copy therefrom and of the whole thereof.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing on:

SeaPort Airlines, Inc.
Attn: Timothy Sieber
7505 NE Airport Way
Portland, OR 97218

Franklin C. Adams
POB 1028
Riverside, CA 92502-1028

Michael J. Edelman
VEDDER PRICE
1633 Broadway, 47th Floor
New York, New York 10019

Ben Munson
EMBARK AVIATION CORP.
745 Atlantic Ave.
Boston, MA 02111

Mark J. Wolfson
100 N Tampa St #2700
Tampa, FL 33602

Tulare County Tax Collector
Attn Jorge Garcia Depty Tax
Collector
221 S Mooney Blvd Rm 104-E
Visalia, CA 93291-4593

by mailing a copy of the above-named document to each of them in a sealed envelope, addressed to each of them at his or her last known address. Said envelopes were deposited in the Post Office at Portland, Oregon, on the above date, postage prepaid.

I hereby certify that the foregoing was served on all CM/ECF participants through the Court's Case Management/Electronic Case File system on the date set forth below.

Dated: April 29, 2016

VANDEN BOS & CHAPMAN, LLP

By: /s/Robert J Vanden Bos
Robert J Vanden Bos, OSB #78100
Douglas R. Ricks, OSB #044026
Christopher N. Coyle, OSB #07350
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